

~~CONFIDENTIAL~~

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES EDWARD WILLIAMS,	)	No. C 12-1691 RMW(PR)
	)	
Plaintiff,	)	ORDER ADDRESSING
	)	PENDING MOTIONS
v.	)	
	)	
R. PEREZ, et al.,	)	
	)	(Docket Nos. 7, 8, 19, 22, 25,
Defendants.	)	29)
	)	

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. The Court issued an order of service for Defendants R. Perez and J. Juarez.

On June 6 and June 13, 2012, Plaintiff filed two motions to amend his complaint. One of those motions appears to contain an amended complaint, adding four more defendants. On July 20, 2012, Plaintiff filed another amended complaint, in which he requests the addition of two more defendants, previously dismissed by the court in its order of service, but plaintiff does not acknowledge the four defendants he wanted to add in his motion to amend.

A plaintiff may amend the complaint once as a matter of course within 21 days after serving it. Fed. R. Civ. P. 15(a)(1)(A). But if the complaint requires a responsive pleading, a plaintiff may amend the complaint 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Id. at (a)(1)(B). In all other cases, a plaintiff must obtain the defendant's consent or leave of court to amend a complaint. Id. at (a)(2). The court will GRANT plaintiff leave to amend his complaint. However, because of the discrepancies described above, the court cannot determine what

1 defendants plaintiff would like to include. Plaintiff must file one operative complaint and may  
2 not incorporate material, or merely make reference to information, from the prior complaints.  
3 Plaintiff must file his SECOND AMENDED COMPLAINT within thirty days from the filing  
4 date of this order.

5 Because the court is striking the first amended complaint, plaintiff's motion to serve  
6 summons is DENIED as premature. The deadline for defendants to file their dispositive motion  
7 is VACATED; the court shall issue a new briefing schedule after plaintiff files his second  
8 amended complaint. Defendants' motion for an extension of time to file a dispositive motion is  
9 DENIED as moot. Similarly, plaintiff's motion for discovery deposition and interrogatories is  
10 DENIED as premature.

11 Plaintiff shall file a SECOND AMENDED COMPLAINT within **thirty days** from the  
12 date this order is filed. The second amended complaint must include the caption and civil case  
13 number used in this order (C 12-1691 RMW (PR)) and the words SECOND AMENDED  
14 COMPLAINT on the first page. If plaintiff files a second amended complaint, he must allege, in  
15 good faith, facts - not merely conclusions of law - that demonstrate that he is entitled to relief  
16 under the applicable federal statutes. **Failure to file a second amended complaint within**  
17 **thirty days and in accordance with this order will result in a finding that further leave to**  
18 **amend would be futile and this action will proceed as stated in the court's July 11, 2012**  
19 **order of service.**

20 Plaintiff is advised that an amended complaint supersedes the original complaint. "[A]  
21 plaintiff waives all causes of action alleged in the original complaint which are not alleged in the  
22 amended complaint." London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981).  
23 Defendants not named in an amended complaint are no longer defendants. See Ferdik v.  
24 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

25 It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
26 informed of any change of address by filing a separate paper with the clerk headed "Notice of  
27 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do  
28 so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of

1 Civil Procedure 41(b).

2 This order terminates docket numbers 7, 8, 19, 22, 25, and 29.

3 IT IS SO ORDERED.

4 DATED: FEB 15 2013

  
RONALD M. WHYTE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES EDWARD WILLIAMS,  
Plaintiff,

Case Number: CV12-01691 RMW

**CERTIFICATE OF SERVICE**

v.

R. PEREZ et al,

Defendant.

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 12, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Edward Williams V-54214  
Salinas Valley State Prison  
Housing: A-5-143  
P.O. Box 1050  
Soledad, CA 93960

Dated: October 12, 2012

Richard W. Wieking, Clerk  
By: Jackie Lynn Garcia, Deputy Clerk